

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Kingsport City Schools)	
Kingsport, Tennessee)	File No. SLD-139214
)	
Lac Du Flambeau Public Schools)	
Lac Du Flambeau, Wisconsin)	File No. SLD-202666
)	
Lee County School District)	
Fort Myers, Florida)	File No. SLD-153221
)	
Mercer County Area Vocational - Technical School)	
Mercer, Pennsylvania)	File No. SLD-152018
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: July 20, 2001

Released: July 23, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. This Order remands to the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator)¹ Requests for Review filed by certain parties in regards to service provider or service changes under the federal universal service program for eligible schools and libraries.² In light of the Commission's decision to modify the current categories of permissible service provider or service changes, as discussed below, we remand these Requests for Review for further review and reconsideration by SLD.³

¹ Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

² Letter from Lloyd Strasburg, Lac Du Flambeau Public School, to Federal Communications Commission, filed July 28, 2000; Letters from George M. Stapp, Lee County School District, to Federal Communications Commission, filed June 8, 2000 and July 18, 2000; Letter from Rich Barber, Mercer County Career Center, to Federal Communications Commission, filed June 1, 2000; Letter from Jeffrey A. Shapiro, Kingsport City Schools, to Federal Communications Commission, filed July 31, 2000 (Requests for Review).

³ See *Request for Review of Decision of the Universal Service Administrator by Copan Public Schools, Copan, Oklahoma*, Order, File No. SLD-26231, CC Dockets No. 96-45, 97-21, FCC 00-100, 15 FCC Rcd 5498 (rel. March

I. BACKGROUND

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts on eligible telecommunications services, Internet access, and internal connections.⁴ In the *Universal Service Order*, the Commission determined that competitive bidding is the most efficient means for ensuring that eligible schools and libraries are informed of the choices available to them and receive the lowest prices.⁵ Thus, the Commission's rules require eligible schools and libraries to seek competitive bids for all services eligible for discounts.⁶ In adopting rules governing the application and competitive bidding processes, the Commission did not address the situation in which a school or library could change service providers or services after the school or library has submitted an FCC Form 471 application designating a particular service. Indeed, section 54.504(c), which makes commitments of support contingent upon the applicant's filing of an FCC Form 471 identifying the service provider and services with which the applicant has signed a contract, makes no provision for a change of providers or services once a commitment of support has been made.⁷

3. To avoid penalizing an applicant that discovers only after filing its FCC Form 471 that its service provider is unwilling or unable to provide service to the applicant, SLD adopted procedures after consultation with Commission staff, allowing for change of service providers. The original procedures allowed applicants to change service provider identification number (SPIN) when the original service provider: (1) refused to participate in the schools and libraries support mechanism; (2) had gone out of business; or (3) had breached its contract with the applicant. The original guidelines also required that the proposed substitute service provider must have participated in the applicant's competitive bidding process.

4. In the *Copan Order*, released on March 16, 2000, the Commission modified those procedures. Specifically, the Commission modified the categories of permissible SPIN changes and provided further guidance on when SPIN changes may be allowable. In the *Copan Order*, the Commission stated that SPIN changes shall be permitted whenever an applicant certifies that (1) the SPIN change is allowed under its state and local procurement rules and under the terms of the contract between the applicant and its original service provider, and (2) the applicant has notified its original service provider of its intent to change service providers.⁸ The Commission stated that it would no longer restrict SPIN changes to those categories enumerated in the SLD

16, 2000) (*Copan Order*) and *Request for Review of Decision of the Universal Service Administrator by Los Angeles Unified School District, Los Angeles, California*, Order, File No. SLD-198056, CC Dockets No. 96-45, 97-21, DA 01-387 (rel. February 14, 2001) (*LA Unified Order*).

⁴ 47 C.F.R. §§ 54.502, 54.503.

⁵ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9029, para. 480 (1997) (*Universal Service Order*) (subsequent history omitted).

⁶ 47 C.F.R. § 54.504.

⁷ 47 C.F.R. § 54.504(c).

⁸ *Copan Order*, 15 FCC Rcd at 5501, para. 6.

guidelines (*i.e.*, service provider refuses to participate, has gone out of business, or has breached its contract).

5. SLD also had in place procedures relating to requests for service or equipment changes. In the past, SLD granted post-funding commitment requests for service changes to applicants in two limited situations. First, when the product or service originally requested was no longer available, SLD would approve a service change for a substitute product or service that performed the same functionality. Second, SLD would also approve a service change when an upgraded product or service was available that performed the same function. That policy applied only to requests for changes in individual pieces of equipment.

6. In both cases, SLD applied three further criteria. First, product or service substitution would only be allowed if there was no increase in price. Second, the service substitution must not have violated any contract provisions or state or local bidding laws. Finally, the proposed service substitution would be denied if it would result in an increase in the percentage of ineligible services or functions.

7. In the *LA Unified Order*, released February 14, 2001, the Common Carrier Bureau (Bureau) concluded that applicants should be afforded similar freedom to make service equipment changes as was made available to applicants seeking a SPIN change by the *Copan Order*.⁹ In so holding, the Bureau found no reason to limit service changes to those circumstances where an applicant substituted a single piece of equipment. Thus, the Bureau concluded that SLD should grant service change requests for a substitute service or product where (1) that service or product has the same functionality; (2) the substitution does not result in an increase in price; (3) the substitution does not violate any contract provisions or state or local procurement laws; and (4) the substitution does not result in an increase in the percentage of ineligible services or functions.¹⁰ In order to ensure the integrity of the competitive bidding process, the Bureau required the applicant's request for a service change to include a certification that the requested change in service is consistent with the controlling Form 470 and Request For Proposal for the original services.¹¹

II. DISCUSSION

8. The parties of this Order have all filed Requests for Review with the Commission, protesting SLD's denial of their service or equipment change requests.¹² In those instances where applicants were seeking service provider changes, SLD denied the applicant's request for the service change provider because the request did not fall squarely within one of the three pre-*Copan* categories or, in one case, the appeal the applicant filed was not filed in a timely manner

⁹ *LA Unified Order*, 16 FCC Rcd at 3496, para. 9.

¹⁰ *Id.*

¹¹ *Id.*

¹² Section 54.719(c) of the Commission's rules provides that any party aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

with SLD.¹³ In those cases where applicants were seeking service changes, SLD acted upon these service change requests prior to the Commission's decision in the *LA Unified Order*.¹⁴ In light of the Commission's *Copan Order* and the Commission's revisions to the standards for permissible service changes in the *LA Unified Order*, we remand these Requests for Review to the Administrator for reconsideration pursuant to the Commission's revised policies.

III. ORDERING CLAUSE

9. Accordingly, IT IS ORDERED, pursuant to sections 1-4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 54.719 and 54.722 of the Commission's rules, 47 C.F.R. §§ 54.719 and 54.722, that the Requests for Review filed by the named parties to this Order ARE GRANTED AND REMANDED to the Schools and Libraries Division for further consideration as provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau

¹³ See 47 C.F.R. § 54.720. See Request for Review of Decision of the Universal Service Administrator by Lac du Flambeau Public School, filed July 28, 2000.

¹⁴ See Request for Review of Decision of the Universal Service Administrator by Kingsport City Schools, filed July 31, 2000; Requests for Review of Decision of the Universal Service Administrator by Lee County School District filed, June 8, 2000 and July 18, 2000; and Request for Review of Decision of the Universal Service Administrator by Mercer County Area Vocational - Technical School, filed June 2, 2000.